

ARTICLE 25. NONCONFORMITIES

- 25.1 PURPOSE
 - 25.2 GENERAL STANDARDS OF APPLICABILITY
 - 25.3 NONCONFORMING USE
 - 25.4 NONCONFORMING STRUCTURES
 - 25.5 NONCONFORMING LOTS OF RECORD
 - 25.6 NONCONFORMING SIGNS
-

25.1 PURPOSE

The purpose of this Article is to provide for the regulation of nonconforming structures, uses, lots, and signs, and to specify those circumstances and conditions under which nonconformities will be eliminated.

25.2 GENERAL STANDARDS OF APPLICABILITY

A. General Rule

No land or structure may be used, and no structure, or part thereof, may be erected, reconstructed, converted, moved, or structurally altered unless in conformity with regulations as set forth in this Ordinance, unless specifically allowed by this Article.

B. Buildings Under Construction

Any structures or signs legally under construction but not in accord with the requirements of this Ordinance will become nonconforming at the time this Ordinance or any subsequent amendment becomes effective.

C. Authority to Continue

Notwithstanding any other provision in this ordinance, any structure, use, lot, or sign that existed as a lawful nonconformity at the time of the adoption of this Ordinance, and any structure, use, lot, or sign that has been made nonconforming because of the terms of this Ordinance or any subsequent amendment may continue to be subject to the provisions of this Article so long as it remains otherwise lawful.

D. Burden on Property Owner to Establish Legality

In all cases, it is the burden of the property owner, through the provision of clear and convincing evidence, to establish the legality of a nonconforming structure, use, lot, or sign under the provisions of this Ordinance.

E. Safety Regulations

All police power regulations enacted to promote public health, safety, and welfare including, but not limited to, all building, fire, and health codes apply to nonconforming structure, use, lot, or sign.

F. Suspension for Force Majeure or Acts of Public Enemy

In the event of force majeure, such as a hurricane, fire, or storm, or acts of public enemy the City Council may, by ordinance, suspend the requirements of this Article for an established period as described in Sections 25.3.C and 25.3.D of this Article.

G. Demolition of a Nonconforming Use or Structure

1. The voluntary demolition of a nonconforming structure, use, or sign will result in the loss of the legal nonconforming status of that use and/or the nonconforming characteristic(s) of that structure, use, lot, or sign, including off-street parking.
2. When a nonconforming structure, use, or sign has been voluntarily demolished, the structure, use, or sign may only be rebuilt in conformity with this Ordinance.
3. Where more than fifty percent (50%) of a structure has been voluntarily demolished, the retention of a wall or façade on a nonconforming yard/setback is not sufficient to retain the nonconforming status of the yard/setback deficiency. In this instance, the work is treated as new construction and all applicable regulations shall be met.

H. Effect on Litigation

All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance heretofore in effect, which are now pending in any of the Courts of this State, or of the United States, are not abated or abandoned by reason of the adoption of this Ordinance, but will be prosecuted to their finality the same as if this Ordinance had not been adopted. All violations of the existing Ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted. Nothing in this Ordinance is construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may have been instituted or prosecuted.

25.3 NONCONFORMING USE

A. Nonconforming Uses

1. A nonconforming use is the use of land or a use within a structure that, as of the effective date of this Ordinance, is used for a purpose not allowed in the zoning district in which it is located.
2. Nonconforming uses are inconsistent with the objectives of this Ordinance, which is to confine certain classes of structures and uses to certain localities, and thus, should be viewed narrowly and have all doubts resolved against the continuation or expansion of nonconformity in order to preserve the property rights of adjacent property owners.
3. Unless specifically permitted by Paragraph E below, all nonconforming uses are subject to the provisions of this Article governing discontinuance and abandonment, change of use, and structures containing a legally nonconforming use.
4. Nonconforming uses that have not been established pursuant to this article shall not be validated except as provided in the applicable provisions of La. R.S. 9:5625.

B. Determination of a Nonconforming Use

1. The Director of the Department of Safety and Permits shall make a determination as to the existence of nonconforming use status in the following instances:
 - a. At the time an application is filed for a building permit.
 - b. At the time an application is filed for a certificate of occupancy, where no building permit is required.
 - c. At the time of a request for an occupational license.
 - d. At the time of a request for a change of use.
 - e. At the request of the property owner or his/her agent.
2. No permit, license, or zoning verification which acknowledges or confirms the existence of nonconforming status may be issued without the written approval of the Director of the Department of Safety & Permits. The rationale for the decision shall be stated in writing.
3. The property owner, or his/her agent, is required to produce clear and convincing evidence as requested by the Department of Safety & Permits attesting to legal nonconforming use status. Such evidence includes, but is not limited to, documents such as rent receipts, affidavits, documentation of utility services, documentation of water services, sales tax receipts, property tax information, and any other information as may be deemed to be necessary in a particular case. Providing such documents does not guarantee that the Director of the Department of Safety and Permits will confirm the existence of legal nonconforming use status.
4. Any interested party may request a verification of non-conforming use, which shall be provided in writing by the Director of the Department of Safety & Permits. The rationale for the decision shall be stated in writing.

C. Discontinuation or Abandonment

1. A particular use that is established as nonconforming is deemed abandoned when that particular nonconforming use is discontinued or becomes vacant or unoccupied for a continuous period of one-hundred eighty (180) days. An abandoned nonconforming use may not be re-established or resumed regardless of intent. Any subsequent occupancy shall comply with all regulations of the zoning district in which the land or structure is located. Where a nonconforming use has ceased operation for renovations in conjunction with a lawfully issued building permit, the nonconforming use shall restore operation within one-hundred eighty (180) days of the cessation of the use.
2. The calculation of the period of discontinuance does not include any period of discontinuance caused by state of emergency, force majeure, or acts of public enemy .
3. The existence of a nonconforming use on part of a lot or tract is not construed to establish a nonconforming use on the entire lot or tract.
4. The casual, intermittent, temporary, or illegal use of land or structures is not sufficient to establish and maintain the existence of any nonconforming use, whether the use is a main or accessory use. In order to provide for the continuation of any established nonconforming commercial use, the business occupying the land or structure shall be in operation a minimum of four (4) hours per day, five (5) days per week. Equipment or furnishings required by City ordinances for the specific type of activity shall be available

and the structure shall be maintained in accordance with applicable ordinances of the City. The existence of a nonconforming use on part of a lot or tract is not construed to establish a nonconforming use on the entire lot or tract.

Reception facilities are not considered casual or temporary due to the intermittently operating nature of the business for scheduled events with food and beverage service at the request of clients. These private events with food and beverage service, scheduled by non-owners and/or operators, shall be held a minimum of fifteen (15) occasions a year to uphold a legal operating status as a reception facility. Exceptions to this operational standard are appealable to the Board of Zoning Adjustments.

D. Destruction of Structures Containing a Nonconforming Use

1. Structures containing a legally nonconforming use that are in whole or in part destroyed by force majeure or acts of public enemy may be restored and the use continued, provided that the restoration is accomplished with no increase in cubical content, no increase in floor area, no increase in the number of dwelling units over the building existing immediately prior to damage, and no intensification of the non-conforming use.
2. Application for a restoration permit shall be made within one (1) year of the destruction. Restoration shall be completed within one (1) year from the date of the issuance of the restoration permit unless an extension is approved by the Board of Zoning Adjustments. Requests for extensions shall be submitted to the Board of Zoning Adjustments prior to the expiration date on the building permit. The applicant must be able to demonstrate that unforeseen circumstances beyond their control caused the inability to complete restoration within the one (1) year. In no event shall the Board of Zoning Adjustments extension be greater than one (1) year.

E. Change of Nonconforming Use

1. Process for Change in Nonconforming Use

The process for a change in nonconforming use, as permitted by this section, is as follows:

- a. An application for a permit for a change in nonconforming uses shall be submitted to the Executive Director of the City Planning Commission and the Clerk of Council. Each application shall be accompanied by the required fee, a floor plan, and a detailed description of both the current and proposed use, including hours of operation, number of employees, off-street parking and loading, delivery schedules, equipment and materials storage, location of refuse containers, signs, screening, and landscape.
- b. Within thirty (30) days of receipt of a complete application, the Executive Director of the City Planning Commission shall submit a recommendation on the application to the City Council. After receiving the recommendation of the Executive Director or if no recommendation has been received after thirty (30) days from receipt of a complete application, the City Council shall conduct a public hearing and shall consider and act upon said application by motion.
- c. The City Council may approve the application only upon determining that the proposed nonconforming use:
 - i. Is a legal nonconforming use as verified by the Director of the Department of Safety and Permits.

- ii. Is not more intensive than the prior nonconforming use.
 - iii. Is consistent with the character of the neighborhood in which it is located.
 - iv. Will provide a needed service to the neighborhood in which it is located.
- d. Within thirty (30) days of approval by the City Council, the applicant shall provide the Director of the Department of Safety and Permits with a copy of the floor plan and the motion approving the change in nonconforming use.

2. Permitted Changes in Nonconforming Use

- a. In all districts, except the Historic Core Districts, if no structural alterations are made, a nonconforming use of a structure may be changed to another nonconforming use of the same or more restrictive classification, provided that the new nonconforming use is not more intensive than the prior use, as determined by the Department of Safety & Permits. Whenever a nonconforming use of a structure has been changed to a more restrictive use or to a conforming use, such use cannot then be changed to a less restrictive use.
- b. In the Historic Core Districts, if no structural alterations are made, a nonconforming use may be changed to another use in accordance with Table 25-1: Historic Core Nonconforming Use Conversion Permissions. Nonconforming residential uses in the HMR-3 District are not permitted to convert to commercial uses.

TABLE 25-1: HISTORIC CORE NEIGHBORHOOD NONCONFORMING USE CONVERSION PERMISSIONS	
A nonconforming use located in the following district:	May be changed to another use, but limited to the uses permitted in the following districts:
VCR District	VCR District
VCC District	VCC District
VCE District	VCR and VCC Districts
VCS District	VCR and VCC Districts
HMR District	HMR and HMC-1 Districts
HMC District	HMR and HMC-1 Districts
HM-MU District	HMR and HMC-1 Districts

F. Limitations on Nonconforming Use Appeals

Whenever an application for a zoning map amendment has been filed and the application has been acted upon by the City Council in accordance with Section 4.2 or when the application has been officially advertised for public hearing but has subsequently been withdrawn either before or after the public hearing has been held, the Board of Zoning Adjustments will not consider any application for appeal of the loss of nonconforming use status for the same property for a period of two (2) calendar years from either the date of the City Council's final action, from the expiration of the one-hundred twenty (120) day period when no action has been taken by the City Council, or from the date of withdrawal of the application following official advertisement. Any appeal taken before the expiration of the two (2) calendar year time limit will neither be docketed nor considered by the Board. The Board of Zoning Adjustments staff will notify the appellant that the appeal is untimely and will not be considered by the Board, and is therefore dismissed.

G. Restoration and Expansion of Certain Nonconforming Uses

The following existing nonconforming uses may be expanded, subject to standards of this section. In the event of any conflict between the limitations on expansion of use in other sections of this Article and specific standards of this section, this section controls.

1. Process for Restoration of Certain Nonconforming Uses

In order to restore certain nonconforming uses such as established multi-family dwellings and neighborhood commercial establishments in the Historic Core and Historic Urban Districts, a conditional use approval is required. In addition to the conditional use requirements, any additional application requirements and approval standards in this section shall be included in the submittal and process. Any variance to the standards of this section shall be approved as part of the conditional use approval process.

2. Expansion of Certain Existing Nonconforming Industrial Uses

- a.** The expansion of a legal nonconforming industrial use is permitted in the Historic Marigny/Tremé/Bywater residential and mixed use districts, the residential and non-residential districts of the Historic Urban and Suburban Neighborhood Districts, the Commercial Center and Institutional Campus Districts, and the Center for Industry Districts. These provisions apply only to industrial uses and do not apply to any residential or commercial uses permitted in an industrial district.
- b.** In order to minimize the impact of nonconforming industrial uses upon adjacent properties and the neighborhood, and to protect the surrounding neighborhood from any adverse effects of such uses, the expansion of an existing nonconforming industrial use shall follow the conditional use process and meet the following standards:
 - i.** The use is a legal industrial use or attained legal nonconforming status through prescription or as a result of a change in zoning classification. The use has been maintained without interruption for two (2) years or since the date use became nonconforming, whichever is less, prior to the application for expansion.
 - ii.** The use is designed, located, and operated so that public health, safety, and welfare is protected.
 - iii.** The use causes no substantial injury to other property in the neighborhood in which it is located.
 - iv.** The use or structure conforms to any additional conditions deemed necessary by the City Council, upon the recommendation of the City Planning Commission, to secure the general objectives of this section and to ensure that other properties in the neighborhood are not adversely affected. The City Council may impose conditions to meet the following standards:
 - (1)** Adequate ingress and egress to the property and to the existing and proposed structures is provided with particular consideration for vehicular and pedestrian safety and convenience, traffic flow and control, and access for fire control vehicles.
 - (2)** Off-street parking and loading areas are able to adequately serve the use of the subject property, with particular attention to ingress and egress, the location and number of spaces, and the impacts of noise or glare on adjoining properties and other properties within the general vicinity.
 - (3)** The location of refuse and service areas are located to ensure safe site circulation and are properly screened.

- (4) Adequate landscape, screening, and buffering is provided to minimize the impact of the use on adjacent properties and other properties in the general area.
 - (5) Existing and proposed signs and any existing and proposed exterior lighting are compatible with properties in the general area.
 - (6) The heights of existing and proposed structures, including any enlargements of existing structures and yards and open space are compatible with properties in the general area.
 - (7) The general scale, arrangement, and design of existing and proposed structures, including building material and any exterior features, are compatible with adjacent or nearby land uses.
- c. A development plan shall be submitted with an application to expand an existing industrial use and shall include the existing industrial use as well as any proposed expansion of the use.
 - d. An industrial use that has been expanded pursuant to this section may not be changed to another use unless reapplication is made in accordance with this section. The change in use shall be similar to the existing use and of the same or of a lesser intensity than the existing use. No change in use is permitted to a less restrictive use.
 - e. Any proposed expansion is limited to the same or contiguous lot(s).
 - f. When the proposed expansion of an industrial use is located in a historic district, the Historic District Landmarks Commission shall review and comment on the application.
 - g. No building permit will be issued until a final plat of the expansion is approved, filed and recorded in the Conveyance Office of Orleans Parish. The development plan and the agreement shall be recorded within thirty (30) days of the date the final approval of the plan is signed or the approval is deemed null and void.
 - h. The City Council may initiate revocation proceedings against the owner of the expanded industrial use in the event of noncompliance or failure to satisfy conditions imposed on approval of the expansion after sixty (60) days notice to the owner.

3. Existing Nonconforming Residential Uses in the Industrial Districts

An existing residential use in an Industrial District that has lost its legal nonconforming may be reestablished, structurally altered, and additions to existing structures may be permitted provided that no additional dwelling units shall be permitted other than those existing prior to the loss of legal nonconforming status. In the Industrial District, additions and structural alterations to existing residential uses shall be permitted provided that no additional residential units may be created through such structural alterations or additions.

4. Expansion of Certain Public and Semipublic Facilities

- a.** Existing railroad facilities, public and governmental uses, public and private schools, and colleges and universities may continue to be operated and maintained in any residential, commercial, medical, non-urban, or office district and may be expanded provided such expansion meets the applicable district regulations or if such expansion is authorized by the Board of Zoning Adjustments. No new such facility may be established except when allowed by the district or when approved as a conditional use.
- b.** Temporary use of off-site facilities for an existing public elementary (including pre-kindergarten and kindergarten), middle, junior high, or senior high school shall be allowed in the districts described in Paragraph a above subject to the following:
 - i.** The temporary use shall be allowed for a period not to exceed two (2) years. An extension of the two (2) year limit may be granted upon request to or by the City Council. A City Council motion duly adopted shall effectuate the extension.
 - ii.** New off-site structures used temporarily must meet the following setback requirements: not less than fifty (50) feet where the side yard or rear yard line abuts a residential district and not less than twenty-five (25) feet from all lot lines abutting streets, canals, or open public spaces.
 - iii.** The student enrollment of the temporary facility shall not exceed twenty-five percent (25%) of the student enrollment of the existing school facility. The enrollment of the temporary facility may be increased upon a request to and approval of the Director of the Department of Safety and Permits in the event of an emergency. Said emergency may constitute a fire, natural disaster, hazardous condition, or any other unforeseen occurrence requiring prompt action.
 - iv.** These criteria shall not be subject to variance or waiver by the Board of Zoning Adjustments. Any variance or waiver from these conditions may be considered upon request to or by the City Council. A City Council motion duly adopted shall effectuate the changes.
- c.** Expansion of an existing school site shall be permitted as a matter of right subject to all the following:
 - i.** The existing school site prior to the expansion is nonconforming in terms of the minimum site size requirement for a school and said expansion of the school site reduces the degree of nonconformity.
 - ii.** There shall be no structures on the expansion site.
 - iii.** The expansion site remains open space or recreational area.
 - iv.** Renovation or reuse for a public school purpose of an existing school facility that has not been approved previously through the conditional use procedure shall be allowed outright, notwithstanding any nonconforming status or period of vacancy, provided that the type of school is not changed to a higher grade grouping school. Any expansion of the site beyond its limits at the time of closure or prior use, other than expansion permitted under item iii above, or change in use to a higher grade grouping, shall require a conditional use permit.

- v. Rebuilding of an existing public school facility that has not been approved through the conditional use process shall be allowed irrespective of any nonconforming status or period of vacancy provided that:

- (1) No increase in floor area occurs greater than fifty percent (50%) of the floor area of the structure prior to rebuilding.

- (2) The type of school is not changed to a higher grade grouping school.

Any expansion of the site beyond its limits at the time of closure or prior use, other than expansion permitted under item iii above, or change in the above stated conditions, shall require a conditional use permit.

5. Existing Nonconforming Radio and Television Towers

Existing radio and television towers in any district, including accessory structures but excluding attached broadcast studios and offices, may continue to be operated, maintained, and are permitted to expand in conformance with the applicable district regulations, provided that the site is a minimum of ten (10) acres and a minimum setback of fifty (50) feet is maintained from all property lines.

6. Existing Nonconforming Hospitals in Single-Family or Two-Family Residential Districts

Existing nonconforming hospitals located in a single-family or two-family residential district may be maintained, altered, or expanded subject to the following standards:

- a. Such expansion includes only the addition of uses or services incidental to the principal activity of the hospital without change of use or zoning classification.
- b. The lot was either:
 - i. Occupied by hospital buildings and used for services customarily incidental to the principal activity of the hospital as of October 19, 1967; or
 - ii. The lot to be maintained, altered, or expanded by the addition of uses or services was contiguous to or abutting the lot where the hospital is situated or is separated by a street and fronted on the same public street separating the lot as of October 19, 1967.
- c. The lot to be maintained, altered, or expanded by the addition of uses or services, together with the other lots owned by the hospital were either contiguous or separated from each other by a public street as of October 19, 1967, contain an aggregate of not less than ten (10) acres.
- d. The expansion or structural alteration does not encroach into any required yard area or off-street parking area.
- e. The proposed alteration or expansion of uses or services complies with existing City ordinances and does not cause serious negative impacts to occupants of adjoining premises by reason of emission of odors, fumes, gases, dust, smoke, noise, vibration, light, glare, or other nuisance.
- f. Any and all future structures or uses are used only for the principal activity or accessory uses to the principal activity of the hospital and for related institutional activities, such as libraries, parking areas, and other similar uses.

- g. No new commercial activities of any kind are permitted, in whole or in part, main or accessory, such as personal service establishments, restaurants, hotels and retail goods establishments, except as may be incidental and necessary to the principal activity of the hospital and of the type that existed in said hospital as of October 19, 1967.
- h. The hospital may not be enlarged outside its current boundaries, including by addition of any other lots subsequently acquired by the hospital.
- i. Any alteration or expansion by the addition of new structures under the provisions of this section shall be enclosed by a continuous masonry, brick, iron, or picket fence. If such fence is not opaque, then landscape shall be installed along the fence to screen the structure. The fence shall be a minimum of seven (7) feet in height.

7. Existing Fairgrounds

An existing fairground in a residential district or in any district when owned by an established public entity may be maintained, structurally altered, or extended, new structures constructed, parking areas extended, and new parking area created within the boundaries of the development, without a change of use. For purposes of this section, this includes, but is not limited to, the following uses: amusement parks, pistol or rifle ranges, racetracks, sport fields. Such uses shall be located on a site no less than ten (10) acres in size within the boundaries of the fairgrounds, as delineated on the Official Zoning Map. The following standards apply to expansions:

- a. There is no further encroachment on any required yard area or off-street parking area.
- b. The required setbacks for a new structure or any extension is twenty (20) feet from a public right-of-way and fifty (50) feet from a residential property line. When a structure abuts a cemetery the required setback from the cemetery is three (3) feet. Any new parking area or any extension of an existing parking area shall be set back twenty (20) feet from a residential property line. The required yard setback from a public right-of-way cannot be reduced to the average front yard setback established by other structures along the street frontage.
- c. Whenever a new structure or parking area or the extension of an existing structure or parking area abuts a public right-of-way or residential property line, a masonry fence or a fence constructed of redwood, cedar, or cypress boards placed vertically, edge to edge, shall be provided. The fence shall be located along the residential property line and seven (7) feet in height, or located ten (10) feet from a public right-of-way and ten (10) feet in height. All barbed wire shall be turned in towards the facility.
- d. A chain wall that extends at least twelve (12) inches below grade and at least six (6) inches above grade shall be constructed and maintained as part of the fence to assure that the drainage does not run onto adjacent properties. An internal drainage system shall be provided for any new facility.
- e. The ten (10) foot area between a public right-of-way and the fence shall be maintained as open space and planted with live groundcover and shrubs.
- f. The shrubs shall be planted prior to the issuance of a certificate of occupancy and a bond in an amount equal to the initial cost submitted to guarantee the maintenance and replacement of the shrubs for two (2) years.

- g. The activities of the development shall not cause serious annoyance or injury to occupants of adjoining premises by reason of the emission of odor, fumes or gases, dust, smoke, noise or vibration, light, or glare or other nuisances and shall comply with all applicable City ordinances.
- h. Expansion of the boundaries of the fairgrounds requires approval of a conditional use.
- i. Waivers or variances to these provisions by the Board of Zoning Adjustment are prohibited. Waivers or variances may be granted by the City Council, following recommendation by the City Planning Commission.

8. Existing Racetracks

A horse or dog racetrack may be operated in conjunction with pari-mutuel wagering between the hours of 6:30 p.m. and 8:30 p.m. when approved as a conditional use, provided that:

- a. The horse or dog track complies with all City ordinances governing and/or prescribing the following:
 - i. Proper setbacks for lighting systems including, without limitation, all parking lot lighting and security light systems.
 - ii. Landscape, drainage, fence placement, and fence design.
 - iii. Size, height, and location of structures, including without limitation stables, barns, grandstands, parking garages, office structures, and lighting standards.
- b. Assurances are provided to the City Council that all applicable State laws are complied with, including approval by the Louisiana State Racing Commission.
- c. The horse or dog track complies with all other ordinances and legal requirements governing land use and development.
- d. All field lights and racecourse illumination systems are directed and placed so as to minimize the effects on neighboring residential properties. Further, such systems do not employ candlepower in excess of the minimum required for the horse or dog racing events. The Council may hire an expert of its selection to examine and inspect any such lighting system so as to insure compliance with this provision, the cost for which to be paid by the applicant. The report and recommendations of such expert shall be conclusive as to whether or not there has been compliance with this section. A plan for all lighting systems shall be formulated, submitted, and approved with the application for the conditional use.
- e. All field lights and racecourse illumination systems shall be turned off no later than 8:30 p.m., and all parking light systems shall be turned off no later than 8:45 p.m. on any evening during which night or twilight racing events are held. Such lighting systems shall otherwise be turned off by 6:30 p.m., except when night repair work is essential and prior approval from the Director of Safety and Permits has been obtained. It is recognized that emergencies can occur, such as a horse or jockey injury, and, in such cases, there is an automatic exception to the provisions of this section. However, it is specifically recognized that the inability of track patrons to exit the parking lot by 8:45 p.m. because of excessive traffic does not constitute an emergency.

- f. The horse or dog track shall implement a plan prescribed by the City Council for ingress to and egress from its facilities. The plan shall minimize the impact of vehicular and pedestrian traffic in surrounding neighborhoods. Except for racetracks that have been in existence for three (3) years or longer at the time of the passage of this Ordinance, all vehicular and pedestrian gates, driveways, or walkways shall be closed to the general public during all hours of operation on any day in which race events will be held after 6:30 p.m. except gates on a major street. The horse or dog track shall also provide, at its expense, personnel to control traffic as it enters and exits the major street gates, driveways, or walkways.
- g. The horse or dog track shall take all necessary steps to control litter along the perimeter of its property. A plan for litter control shall be formulated, submitted and approved with the application for the conditional use permit.
- h. Night or twilight racing is limited to two (2) evenings per week.
- i. In the event that any condition of the conditional use is violated, the City Council, on its own motion or on the petition of any interested or affected person, will undertake revocation proceedings.
- j. Waivers or variances to these provisions by the Board of Zoning Adjustment are prohibited. Waivers or variances may be granted by the City Council, following recommendation by the City Planning Commission.

9. Existing Two-Family Dwellings in the Lake Area Districts

- a. Two-family dwellings, where the two-family residential use is the immediate previous legal use of the structure, shall be permitted to be re-established, structurally altered, and additional floor area may be added to the structure, provided that no additional dwelling units shall be permitted.
- b. Two-family residential structures described above may be demolished and rebuilt, provided that they obtain a building permit for construction within one (1) year of issuance of a demolition permit and complete construction and obtain a certificate of occupancy from the Department of Safety and Permits within (1) year of the issuance of the building permits.
- c. With regard to the standard time limitations in subsection (b) above regarding demolition and building permits, properties that were established as legal two-family dwellings as of August 29, 2005 (the date of Hurricane Katrina) shall retain two-family dwelling status for three (3) years following demolition or until August 29, 2010, whichever is earlier. These Katrina damaged two-family dwellings that have not obtained a building permit by August 29, 2010 will lose two-family status and revert to the underlying single-family status.

10. Existing Borrow Pits

Legally established borrow pits existing as of the effective date of this Ordinance are considered legal nonconforming uses and may continue to operate as approved. Any changes to the approved design and operations plan shall be approved as an amendment to the conditional use. Once the borrow pit is closed, the agreements within the approved end-use plan shall be executed.

25.4 NONCONFORMING STRUCTURES

A. Nonconforming Structure

Structures that at one time conformed to applicable zoning regulations, but because of subsequent amendments to this Ordinance no longer conform to applicable yard, height, lot coverage, or other dimensional or bulk provisions of this Ordinance, are considered nonconforming structures.

B. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair may be performed on any nonconforming structure. No repair or reconstruction is permitted that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the structure in any manner.

C. Structural Alterations

No structural alterations are permitted for any nonconforming structure, except in the following situations:

1. When the alteration is required by law or is necessary to restore the structure to a safe condition upon the order of any official charged with protecting the public safety.
2. When the alteration will result in eliminating the nonconformity.
3. Structures that are legally nonconforming as to height, floor area ratio, yards, lot area per dwelling unit, or parking may be maintained, structurally altered, or increased in cubical content, provided such alteration or increase in cubical content does not further increase the extent of the nonconformity or permit an increase in the number of dwelling units. Limitations as to cubical content and increase in floor area do not apply to existing industrial uses in the Vieux Carré.

D. Additions and Enlargements

Structures which are nonconforming as to height, floor area ratio, yard, lot area, lot width, lot depth, or parking may be enlarged (i.e., increased in cubical content), provided such enlargement does not further increase the extent of the nonconformity or permit an increase in the number of dwelling units. (See Figure 25-1: Permitted Expansions of Nonconforming Structures)

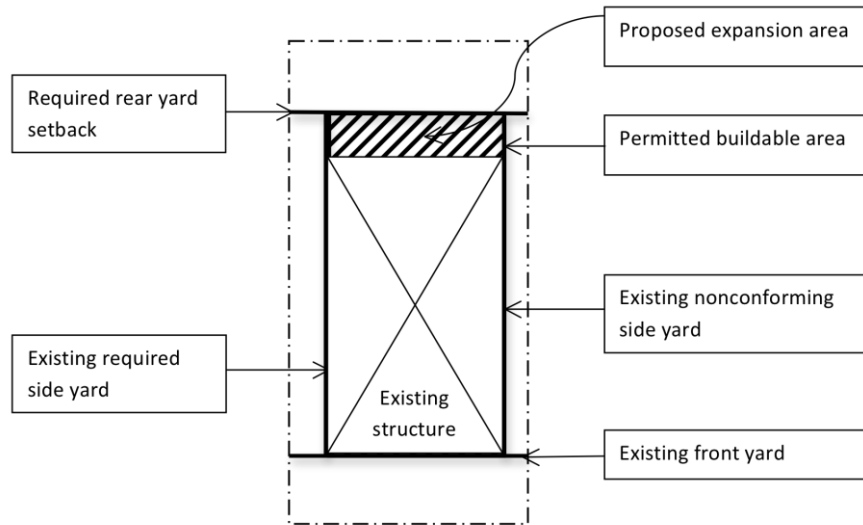
FIGURE 25-1: PERMITTED EXPANSIONS OF NONCONFORMING STRUCTURES

NOTES:

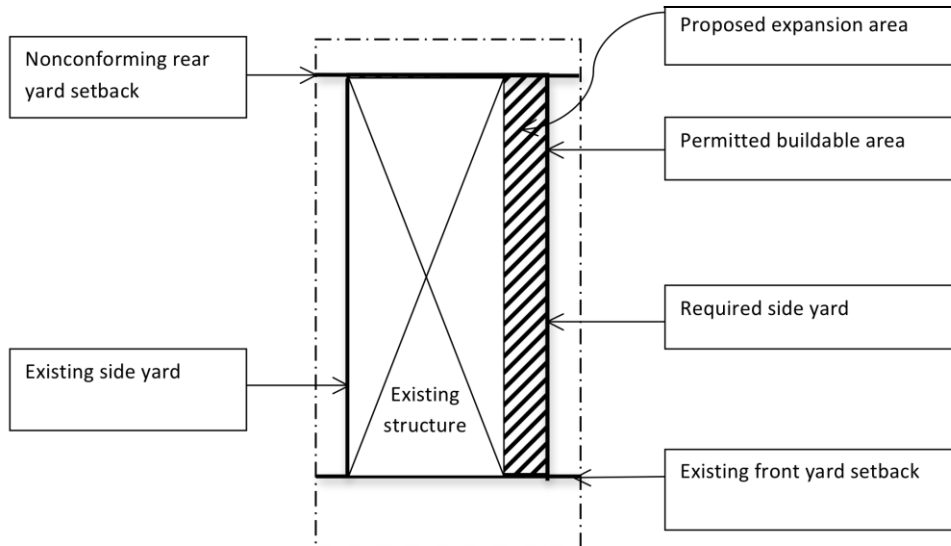
Dotted line indicates the property lines.

Heavy line indicates buildable area.

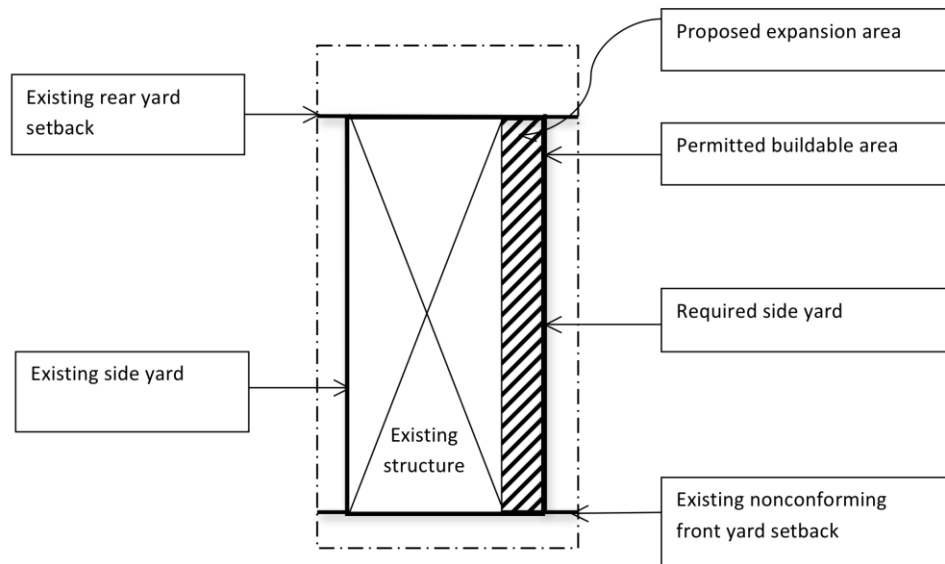
Any expansion outside of the buildable area requires a variance from the Board of Zoning Adjustments.



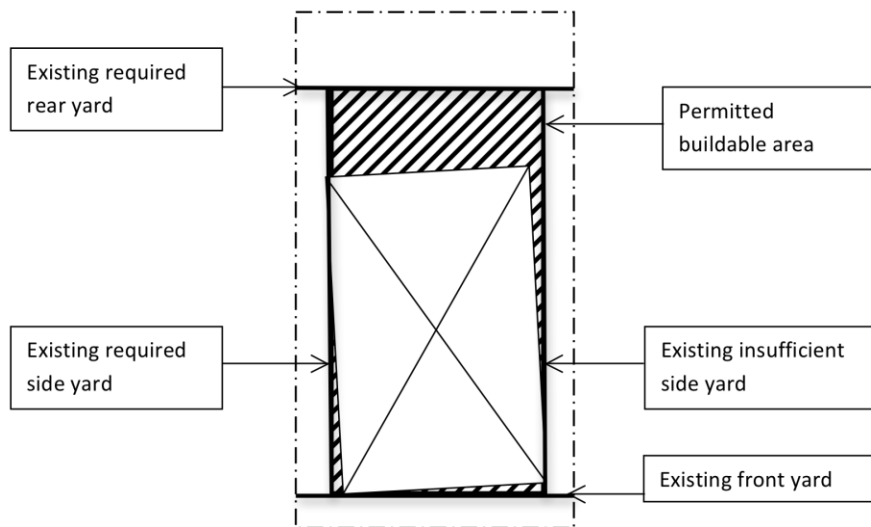
This diagram represents a proposed expansion along a nonconforming side yard into the buildable area.



This diagram represents a proposed expansion along a nonconforming rear yard into the buildable area.

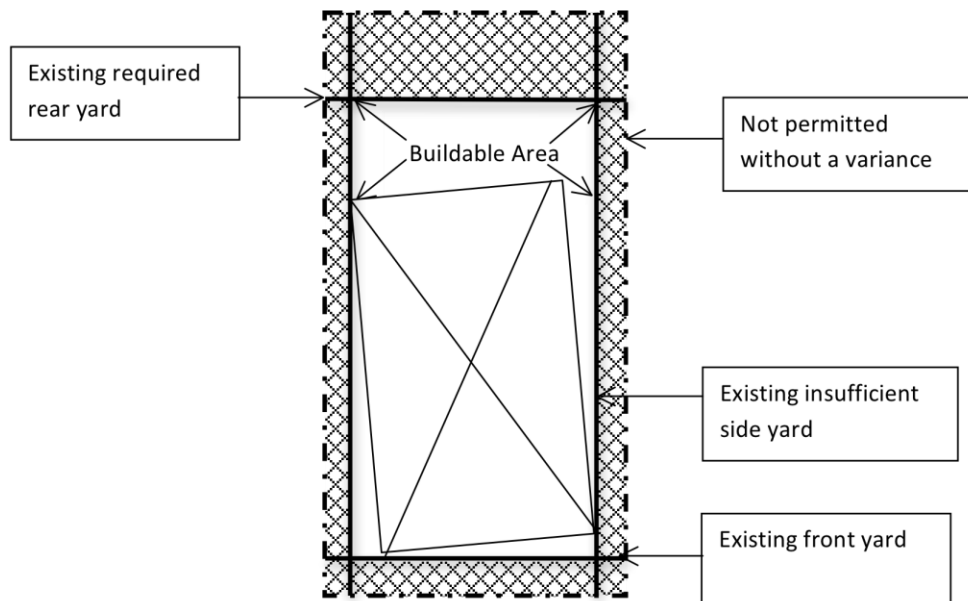
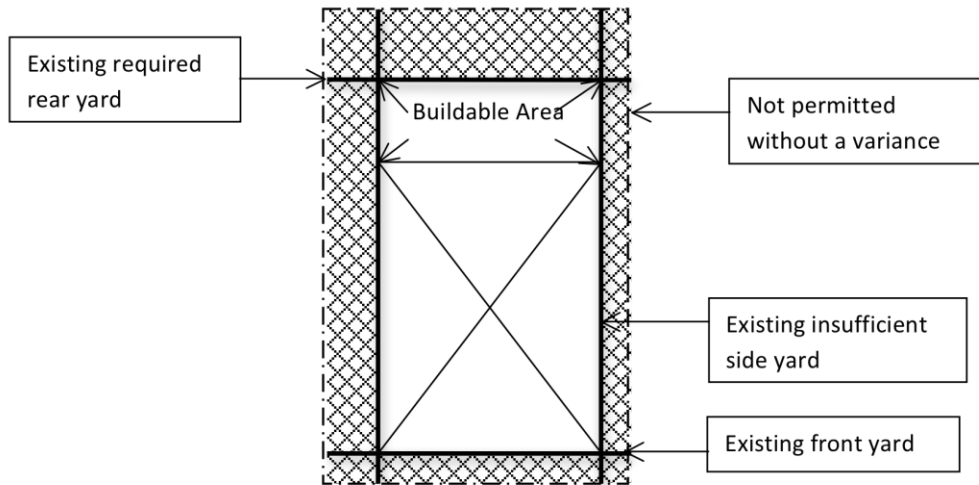


This diagram represents a proposed expansion along a nonconforming front yard into the buildable area



This diagram represents a proposed expansion of a structure that is built at an angle to the property line into the buildable area

The following two diagrams are examples of expansions that require variance(s)



E. Relocation

A nonconforming structure may not be relocated, in whole or in part, to any other location on the same lot. A nonconforming structure may be relocated to another lot if the structure conforms to all regulations of the zoning district in which it is relocated.

F. Damage or Destruction

1. In the event that any nonconforming structure is damaged or destroyed to the extent of fifty percent (50%) or more of its replacement value at that time, then the structure may not be restored or rebuilt unless the structure, including foundation, is made to conform to all regulations of the zoning district in which it is located.

2. When such a structure is damaged or destroyed to the extent of less than fifty percent (50%) of the replacement value at that time, it may be repaired and reconstructed provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit shall be obtained for such rebuilding, restoration, repair, or reconstruction within one (1) year of the date of damage or destruction, and construction shall be completed within one (1) year of issuance of the building permit.
3. Nonconforming structures that are in whole or in part destroyed by force majeure or acts of public enemy may be restored, provided that the restoration is accomplished with no increase in cubical content, no increase in floor area, no increase in the number of dwelling units over the building existing immediately prior to damage, and no intensification of the non-conforming use.

25.5 NONCONFORMING LOTS

This section regulates residential nonconforming lots that at one time were conforming, but which no longer conform to the lot area, lot width, or lot depth requirements of the zoning district in which they are located.

A. Residential Districts (Except Historic Urban Residential Districts)

1. Lots of Record Held in Common Ownership

If two (2) or more lots with contiguous frontage are held in common ownership that have historically been used as a single development site, and one (1) or more of the lots does not meet the requirements for lot width or lot area as established by this Ordinance, the land shall be considered to be a single undivided parcel for the purposes of this Ordinance. No portion of the parcel may be used, transferred, or conveyed that does not meet the lot width and lot area requirements established by this Ordinance. No division of the parcel may be made which leaves the remaining lot(s) with lot width, lot area, or lot depth below the requirements of this Ordinance without the authorization of the Board of Zoning Adjustments. No building permit may be issued for the use of any lot or portion of a lot transferred or conveyed in violation of this section.

2. Exceptions for Individual Lots

Notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling may be erected on a single legal nonconforming lot provided that the lot is in separate ownership, or does not abut a lot with similar ownership, and it meets all other zoning district bulk requirements with the exception of lot area, lot width and lot depth.

B. Historic Urban Neighborhood Residential Districts

On nonconforming lots within the Historic Urban Neighborhood Residential Districts, a single-family or two-family dwelling may be erected on a single legal nonconforming lot, subject to the following standards:

1. Two-family dwellings are permitted only where the zoning district permits two-family dwellings.

2. The development shall comply with the yard requirements of the applicable zoning district.
3. If separate lots are created for each dwelling unit of a two-family dwelling, each dwelling unit of a two-family dwelling need not be located on a lot complying with the minimum lot area and lot area per dwelling unit requirements for such district provided that:
 - a. Each lot shall be a minimum of two-thousand five-hundred (2,500) square feet.
 - b. The minimum lot width for each individual dwelling unit of a two-family dwelling shall be twenty-five (25) feet and the minimum lot depth is ninety (90) feet.
 - c. A two-family dwelling shall have a party or common wall separating the dwelling units consistent with applicable law.

25.6 LEGAL NONCONFORMING SIGNS

Signs that at one time conformed to the sign regulations of this Ordinance, but because of subsequent amendments to this Ordinance no longer conform to the sign regulations of this Ordinance, are considered legal nonconforming signs. Legal nonconforming signs may continue with the following conditions:

- A. The sign shall be properly maintained in a safe condition. An existing nonconforming sign may change the sign face, so long as the area of the sign face is not expanded or the sign or structure is not modified in any way that increases the nonconformity. Repainting, cleaning, or other normal maintenance or repair of a nonconforming sign is permitted but shall not modify the sign in any way that increases the nonconformity.
- B. Changes are permitted that will bring the nonconforming sign into conformance with the provisions of this Ordinance.
- C. If a nonconforming sign is damaged in such a manner that the estimated expense of repairs exceeds fifty percent (50%) of its replacement value, the sign shall be removed.
- D. After the activity, business, or use to which a nonconforming sign relates has been discontinued for more than six (6) months, the nonconforming sign and/or sign structure shall lose its legal nonconforming status and the nonconforming sign shall be removed.
- E. Classic signs may be exempt from provisions of this section, subject to compliance with Section 24.15, Classic Signs.